APPENDIX

DOCUMENTS RELEVANT TO DECREE OF RESPONDENT SUPERIOR COURT:

A. (RESPONDENT'S) NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT

B. (PETITIONERS') MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO (RESPONDENT'S) MOTION FOR PARTIAL SUMMARY JUDGMENT (Exhibits Omitted)

DOCUMENTS RELEVANT TO REVIEWING COURTS:

C. (PETITIONERS') PETITION FOR WRIT OF MANDAMUS - COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FOURTH APPLLATE DISTRICT, DIVISION TWO (Exhibits Omitted)

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DECREE APPEALED FROM:

I. DECLARATION OF GARY D. WELLS IN LIEU OF TRANSCRIPT

EXHIBIT "A"

SUPERIOR COURT OF
THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

LEE CHANCELLOR, et ux.,	**CASE NO. 30-51-00**
Plaintiffs,	**NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT**
vs.	
MARK JAY BAKER, etc., et al.,	
Defendants,	

TO LEE CHANCELLOR AND JEAN CHANCELLOR AND THEIR ATTORNEY (S) OF RECORD:

NOTICE IS HEREBY GIVEN that on February 10, 1982, at 9:30 A.M. in Department 22 of the above Court located at 700 Civic Center Drive West, Santa Ana, California, defendant MARK JAY BAKER will move for partial summary judgment on the issue of punitive damages in favor of defendant and against plaintiff.

The motion will be made on the ground that there is no triable issue as to any material fact and that defendant is entitled to judgment in his favor as to punitive damages as a matter of law. The motion will be based on this notice of motion, the attached memorandum of points and authori-

ties, the records on file on this cause and such oral and documentary evidence as the Court may permit.

Pursuant to Orange County Superior Court Rule No. 12, the responding party must serve and file his answering affidavits, if any, and his memorandum of law, if any, no later than seven (7) court days before the hearing and that failure to comply with this Rule, unless excused by an order of this Court, may result in the refusal of this Court to consider the answering papers.

DATED: January 6, 1982

CRYSTAL C. SIMS
Attorney for MARK JAY BAKER

MEMORANDUM OF POINTS AND AUTHORITIES

Preliminary Statement

Plaintiffs in their Complaint allege that they are the natural parents of KARL MARCUS CHANCELLOR, who died on February 10, 1978. In their Complaint, plaintiffs seek punitive and exemplary damages pursuant to Civil Code § 3294 (Paragraph 10) and pray for punitive damages. Defendant is presently incarcerated in the State Pententiary at Tracy, California, after pleading guilty to the felony murder charges arising out of the death of plaintiffs' 20 year old son. Trial is currently set for June 28, 1982.

I.

CIVIL CODE SECTION 3294 DOES NOT PERMIT THE RECOVERY OF PUNITIVE DAMAGES IN THE INSTANT WRONGFUL DEATH ACTION.

Although punitive damages may be recovered in survival actions and tort actions generally pursuant to Civil Code §3294, that section does not apply to wrongful death actions. In re Paris Air Crash, 622 F. 2d 1315 (9th Cir. 1980); **Grimshaw v. Ford Motor Co.**, 119 Call. App. 3d 833, 174 Cal. Rptr. 348 (1981); **Tarasoff v. Regents of the Univ. of Calif.**, 17 Cal. 3d 425, 131 Cal. Rptr. 14 (1976); **Pease v. Beech Aircraft Corp.**, 38 Cal. App. 3d 450; 113 Cal. Rptr. 416 (1974). Instead, Code of Civil Procedure Section 377 governs wrongful death actions where punitive damages are not recoverable. **Georgie Boy Mfg., Inc. v. Superior Court, etc.**, 115 Cal. App. 3d 317 (1981), **Cortez v. Macias**, 110 Cal. App. 3d 640 (1980).

Code of Civil Procedure Section 377 creates a wholly statutory cause of action in the heirs of the decedent. 4 Witkin, Torts §787, p. 3085. This cause of action must be based on the plaintiffs' own pecuniary loss and is distinct from any the deceased might have maintained had he survived. See **Justus v. Atchison**, 19 Cal. 3d 564, 572, 139 Cal. Rptr. 97 (1977); **Carr. v. Duncan**, 90 Cal. App. 2d 282, 284, 202, P.2d 855 (1949); **Adams v. U.C.C. Project Development Corp.**, 48 Cal. App. 3d 836, 839, 122 Cal. Rptr. 58 (1975); **Estate of D'India**, 63 Cal. App. 3d 942, 947, 134 Cal. Rptr. 165 (1976).

Under the above authorities, defendant respectfully submits that punitive damages cannot be recovered in the instant action under Civil Code Section 3294.

II.

DENIAL OF AN AWARD OF PUNITIVE DAMAGES DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES.

If there is a rational relationship between the statute and a legislative object, then the statute limiting tort liability is valid. **In re Paris Air Crash, supra.** In dealing with limitations on tort liability, the United States Supreme Court has upheld statutes far more restrictive than Code of Civil Procedure §377. In **Mobile Oil Corp. v. Higginbotham,** 436 U.S. 618 (1978), the Court upheld a statute where a certain class of plaintiffs was deprived all together of one type of compensatory damages. Again in **Duke Power Co. v. Carolina Environmental Study Group,** 438 U.S. 59 (1978), the Court sustained a ceiling on aggregate liability for nuclear accidents.

Similar to the above cases, the purpose of Code of Civil Procedure Section 377 is to provide compensation for pecuniary losses of the heirs of decedents while simultaneously preventing excessive recoveries in wrongful death actions. Disallowance of punitive damages clearly serves these important goals. **In re Paris Air Crash, supra; Georgie Boy Mfg. Co., v. Superior Court,** supra; **Cortex v. Macias, supra.**

CONCLUSION

Defendant's motion for partial summary judgment should be granted since, as a matter of law, punitive damages cannot be recovered in the instant action.

DATED: January 6, 1982.

Respectfully submitted,

CRYSTAL C. SIMS
Attorney for MARK JAY BAKER

EXHIBIT "B"

Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

LEE CHANCELLOR, et ux.,

Plaintiffs,

vs.

MARK JAY BAKER, etc., et al.,

Defendants.

CASE NO. 30 51 00
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS MOTION FOR PARTIAL SUMMARY JUDGMENT

Date: February 10, 1982
Time: 9:30 A.M.
Dept.: 22

Plaintiffs in the above-captioned action hereby respectfully submit their Memorandum Of Points And Authorities in opposition to the currently-pending Motion For Partial Summary Judgment of Defendant Mark Jay Baker, as follows:

1. PRELIMINARY STATEMENT:

During the late evening hours on February 10, 1978, under the pretext of offering a ride home to Plaintiffs' son, Karl Marcus ("Mark") Chancellor, deceased (hereinafter "DECEDENT"), the Defendant Mark Jay Baker (herinafter "BAKER") lured the DECEDENT into his automobile. After driving for approximately 20 minutes, BAKER stopped his automobile and forced the DECEDENT to accompany him to the beach in the area of Niguel Park located in South Orange County, California. BAKER has admitted that his purpose was to rob DECEDENT. When the DECEDENT refused to hand over his money to BAKER, BAKER caved-in DECEDENT's face and skull with, in quick succession, two ferocious, smashing blows of a shotgun barrel, with which weapon BAKER had threatened the DECEDENT to accompany him to that beach location and in connection with his robbery demands. BAKER then ghoulishly robbed DECEDENT's lifeless corpse.

BAKER accomplished his murderous deed with cold-blooded efficiency, which resulted in the DECEDENT's instantaneous death. Subsequently to his arrest and since his conviction for first degree murder, BAKER has attempted in some manner to "mitigate" his own unconscionable and outrageous behavior by claiming that the DECEDENT's death was somehow drug-related; but of course BAKER's proclivity for a lack of truth and veracity in his words is reflected in his deeds.

At no time did BAKER show any remorse. Rather, after it became obvious to BAKER's defense counsel that BAKER would surely be convicted of the first degree murder charges against him, BAKER changed his plea to guilty to those charges, acknowledged his consciousness of guilt and explained that his only purpose in finally confessing to his crime was that he did not want to "... die in the death chamber". The foregoing facts are set forth in the transcript of the Hearing Re Change of Plea And Sentencing in those criminal proceedings, Orange County Superior Court Case No. C-39790, which was held on October 19, 1978. A photocopy of the aforesaid transcript in relevant part is attached hereto as Exhibit "A" and incorporated herein by this reference. Plaintiffs respectfully request that the Court take judicial notice of all the files, pleadings and records in the aforesaid criminal proceedings, pursuant to California Evidence Code, Section 452.

In this lawsuit, Plaintiffs, who are the natural parents of DECEDENT and who are his sole surviving heirs at law (DECEDENT died interstate, unmarried, and having no children), are bringing their action for wrongful death against BAKER for his murder of their son. In the foregoing connection, Plaintiffs are requesting punitive damages to be awarded against BAKER by way of punishing BAKER for his outrageous behavior, and for the purpose of detering BAKER and other such reprehensible criminals from committing similar acts in the future.

By his subject Motion, BAKER is requesting the Court to determine **as a matter of law** that Plaintiffs are not entitled to recover any such punitive damages as aforesaid. In that connection, BAKER is arguing that to allow any such (punitive damages) recovery by Plaintiffs would constitute an "excessive" recovery, and as such is not permitted pursuant to **California Code of Civil Procedure,** Section 377.

As discussed below, in essence BAKER is arguing that he should be "rewarded" for dispatching the DECEDENT with such brutal and instantaneous efficiency. BAKER is requesting the Court to shield him from any liability for punitive damages by suggesting that only those murderers who are less efficient than he by allowing their victims to linger on for some brief period of time, or to survive, should be punished for their ineptness by being exposed to liability for punitive damages. BAKER's said Motion is not supported by any Declaration(s), and is based solely on the pleadings on file in this matter to date.

A convenient summary of all relevant and current case law interpreting the statutes applicable to Plaintiffs' cause of action is set forth in **Grimshaw v. Ford Motor Co.** (1981) 119 C.A.3d 833. That case is also cited by BAKER in his moving papers filed herein. As hereinafter more particularly discussed, neither the **Grimshaw** case nor any other case cited by BAKER is applicable to the circumstances of Plaintiff's action, and Plaintiffs' counsel has been unable to locate any such case on point.

However, from the **Grimshaw** decision it appears that it would be a denial of Plaintiffs' constitutional right to equal protection of the law if this Honorable Court denies Plaintiffs the right to recover punitive damages under the circumstances of this case.

2. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED; PLAINTIFFS' COMPLAINT RAISES A TRIABLE ISSUE OF FACT IN CONTEXT WITH RELEVANT STATUTORY AND CASE LAW.

a. A Decedent's Personal Representative Has A Conditional Right To Recover Punitive Damages.

It appears to be well-settled that in a case where the decedent dies with a surviving claim for punitive damages, those punitive damages are recoverable by the decedent's personal representative pursuant to **California Probate Code,** Section 573 (**Grimshaw v. Ford Motor Co., supra,** 119 C.A.3d at 829, hn. 41). However, decedent's personal representative is not entitled to recover any such punitive damages in the event of the decedent's **instantaneous** death (119 C.A.3d at 833). Therefore, it is clear that the personal representative's right to bring an action to include a recovery for punitive damages is conditioned on the decedent having survived for some period of time after the death-causing incident.

In **Grimshaw**, the Court specifically found that the decedent had "survived for three days after the accident" and, therefore, that the plaintiffs in that case were "heirs whose decedent had a claim for punitive damages at death" (119 C.A. 3d at 829, 833).

b. The DECEDENT's Personal Representative In This Case Had/Has No Right To Recover Punitive Damages.

As discussed above, as a result of BAKER's cold-blooded efficiency in causing the DECEDENT's **instantaneous** death in this case, the DECEDENT's personal representative at no time had any right to recover punitive damages under **California Probate Code**, Section 573 (119 C.A.3d at 833).

c. To Deny Plaintiff's Right To Recover Punitive Damages In This Case Would Create An Unjustifiable "Anomaly" In The Law.

As discussed by the Court in **Grimshaw**, "(a) statutory scheme which would punish a tortfeasor if he inflicts death-causing injury which does not result in simultaneous death but would not punish if death occurs instantaneously is difficult to explain on the basis of any conceivable, realistic, rational legislative purpose" (119 C.A.3d at 834).

However, the Court in **Grimshaw** went on to say that it was avoiding any attempt "to explain the (aforesaid)

anomaly" because the Court determined that the plaintiffs in that case were "heirs of a decedent who died **with** a claim for punitive damages". The Court left open the question of "whether or not it would be a denial of equal protection to preclude heirs of a decedent who died **without** a surviving claim for punitive damages from seeking such recovery" (emphasis added; 19 C.A.3d at 834, 836). The aforesaid "anomalous" factual circumstance which the **Grimshaw** Court avoided deciding is exactly the situation that this Court is now called upon to resolve.

BAKER, by causing DECEDENT's instantaneous death, thereby effectively prevented any action for punitive damages by DECEDENT's personal representative(s). By his subject Motion, BAKER is attempting to foreclose **any** recovery whatsoever for punitive damages by arguing that Plaintiffs, the DECEDENT's sole surviving heirs at law, should be likewise foreclosed from recovering any such damages. Thus it is clear that the "anomaly" in the law discussed in the **Grimshaw** case now is being urged by BAKER as a shield to protect all murderers who demonstrate similar efficiency.

If BAKER's argument is accepted, this Court thereby will be encouraging all such cold-blooded criminals to ply their bloody trade to prompt finality because to allow their victims to linger on for some period of time, or to survive, would only invite further and additional punishment in the form of punitive damages recovery by the victims' personal

representatives. thus the aforesaid anomaly at law is urged by BAKER to result in an anomaly of good conscious contrary to any notion of substantial justice in this society.

d. Plaintiffs' Pleadings Raise A Triable Issue Of Fact, In Context With Relevant Statutory And Case Law; Accordingly, Defendant's Motion For Partial Summary Judgment Should Be Denied.

It is well-established that the purpose of the Summary Judgment procedure is **not to try the issues** raised by the pleadings, but merely to determine **whether there are issues to be tried (Eagel Oil v. Prentice** (1942) 19 C.2d 553). The Appellate Courts have not been favorably inclined to use the "drastic" remedy of Summary Judgment, which remedy deprives a party of the right to a trial on the issues raised by the pleadings (See: 4 Witkin, **California Procedure 2d,** Page 2844; **California Code Of Civil Procedure,** Section 437C). Thus it is clear that if any factual issue is raised by that portion of Plaintiffs' action herein which is the subject of BAKER's current Motion for partial Summary Judgment, that Motion should be denied.

As discussed above, such a factual issue is indeed raised by Plaintiffs' pleadings in connection with their prayer for punitive damages, to wit: If Plaintiffs show that the DECEDENT died **instantaneously** they therby will be included in that category of " . . . heirs whose decedent died **without** a surviving claim for such (punitive) damages"

(emphasis added) as so described by the Court in **Grimshaw**, discussed above (119 C.A.3d at 833). Having made such a showing, Plaintiffs also will have thereby demonstrated that it would be a denial of constitutional equal protection to preclude them from seeking punitive damages recovery against BAKER (i.e., the "anomaly" in the law referred to by the Court in **Grimshaw**, 119 C.A. 3d at 834-835).

CONCLUSION

In light of the foregoing, it appears that a triable issue of fact is raised by the pleadings in this case, in context with relevant statutory and case law, which triable factual issue constitutes the basis for Plaintiffs' claims for punitive damages against BAKER; that to allow BAKER to be shielded from any such punitive damages recovery by Plaintiffs herein would be to propagate an apparent statutory anomaly into an unjustifiable decisional anomaly, contrary to all notions of substantial justice in this society; and that any such punitive damages recovered by Plaintiffs under the circumstances of this case would not be "excessive". Accordingly, Plaintiffs respectfully request and urge that the Court deny BAKER's said Motion for partial Summary Judgment in its entirety, and to allow the issue of Plaintiffs' entitlement to recover punitive damages to be resolved on its merits at the time of Trial.

DATED: January 29, 1982

Respectfully submitted,
GEORGE L. CHELIUS
A Professional Law Corporation

By: GARY D. WELLS
Attorneys for Plaintiffs.

COURT OF APPEAL - FOURTH DIST.
FILED
FEB. 22, 1982
RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

EXHIBIT "C"

4th Civil No. 27722

COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION TWO
STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent.

MARK JAY BAKER, an Individual,

Real Party In Interest.

PETITION FOR WRIT OF MANDAMUS
AND
MEMORANDUM OF POINTS AND AUTHORITIES

Petition From An Order
By Hon. Thomas F. Crosby, Jr., Judge
Granting Partial Summary Judgment
In Orange County Superior Court Case No. 30 51 00

George L. Chelius, A Professional Law Corporation
By: Gary D. Wells
610 newport Center Drive, Suite 1665
Newport Beach, California 92660
(714) 759-0180

Attorneys For Petitioners

Manuscript Format By: Maureen Seville

4th Civil No._____

COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION TWO
STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR,
Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE,

Respondent.

MARK JAY BAKER, an Individual,

Real Party In Interest.

PETITION FOR WRIT OF MANDAMUS
AND
MEMORANDUM OF POINTS AND AUTHORITIES

Petition From An Order
By Hon. Thomas F. Crosby, Jr., Judge,
Granting Partial Summary Judgment
In Orange County Superior Court Case No. 30 51 00

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Attorneys For Petitioners

Manuscript Format By: Maureen Seville

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TO: THE HONORABLE PRESIDING JUSTICE AND THE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO.

I
PETITON
FOR
WRIT OF MANDAMUS

Petitoners, Lee Chancellor and Jean Chancellor, hereby respectfully petition this Honorable Court for extraordinary relief in the nature of its mandate directing the Respondent Superior Court Of The State Of California, For The County Of Orange, to vacate its certain partial summary judgment Order hereinafter described, and by this verified Petition allege:

A. THE PARTIES.

The Petitioners are the natural father and mother, respectively, and the sole surviving heirs at law of Carl Marcus ("Mark") Chancellor, deceased (hereinafter "DECEDENT"). The Real Party In Interest, Mark Jay Baker (hereinafter "BAKER"), has pleaded guilty to and is currently serving a life sentence for first degree murder in connection with DECEDENT's death. Petitioners are prosecuting their civil action for wrongful death against BAKER. which action action is now pending in the Respondent Superior Court, entitled Lee Chancellor

and Jean Chancellor, Individuals, Plaintiffs, vs. Mark Jay Baker, and Individual, and DOES 1 through 10, inclusive, Defendants, Orange County Superior Court Case No. 30 51 00.

B. THE FACTS RELEVANT TO THIS PETITION.

As more particularly discussed in Exhibits "A" and "D" attached hereto, BAKER has admitted to murdering DECEDENT during the late evening hours on February 10, 1978 in connection with and in furtherance of BAKER robbing the DECEDENT. On January 11, 1979, Petitioners commenced their wrongful death action against BAKER by filing their Complaint in the Orange County Superior Court; a photocopy of that Complaint is attached hereto as Exhibit "A" and incorporated herein by this reference.

On or about April 21, 1980 BAKER filed his Answer to Petitioners' Complaint, which Answer purports to deny all of the material allegations of that Complaint; a photocopy of BAKER's aforesaid Answer To Complaint is attached hereto as Exhibit "B" and incorporated herein by this reference.

In relevant part, Petitioners' aforesaid Complaint alleges the outrageous nature of BAKER's conduct in murdering their son and requests recovery of punitive damages pursuant to **California Civil Code,** Section 3294 **(Ref: Complaint,** Page 3, Lines 13 through 18, inclusive, and 23; Exhibit "A", attached).

On or about January 6, 1982, BAKER filed his Notice Of Motion For Partial Summary Judgment, which in essence

requested that the Respondent Superior Court refuse to permit Petitioners to proceed to Trial on the issue of punitive damages; a photocopy of BAKER's said Notice Of Motion, Etc. is attached hereto as Exhibit "C" and incorporated herein by this reference. As appears from the aforesaid moving papers, BAKER argued that the Petitioners were not entitled to proceed to Trial on the issue of punitive damages **as a matter of law.**

On January 29, 1982, Petitioners timely filed their Memorandum Of Points And Authorities In Opposition To Defendant's Motion For Partial Summary Judgment, a photocopy of which Memorandum is attached hereto as Exhibit "D" and incorporated herein by this reference. As appears from the aforesaid Memorandum, Petitioners argued that under the circumstances of their particular case it would be a denial of constitutional equal protection of the law for the Respondent Superior Court to refuse to permit them to proceed to Trial on that punitive damage issue.

On February 10, 1982, the Respondent Superior Court in fact "reluctantly" did grant BAKER's aforesaid Motion for partial summary judgment. However, during the course of the aforesaid Motion proceedings, the Respondent Superior Court announced that it would grant BAKER's said Motion only on the condition that BAKER concede the issue of DECEDENT's **instantaneous** death, and BAKER, through counsel, did indeed concede that issue at that time. Accordingly, as a result of the Respondent

Superior Court's ruling and order as aforesaid, it is conceded that Petitioners constitute "heirs whose decedent died **without** any surviving claim for punitive damages". The foregoing is more particularly set forth in the Declaration Of Gary D. Wells In Lieu Of Transcript, a photocopy of which Declaration is attached hereto as Exhibit "E" and incorporated herein by this reference.

C, RESPONDENT'S ERROR/ABUSE OF DISCRETION.

The Respondent Superior Court erred in refusing to permit Petitioners to proceed to Trial on the issue of punitive damages.

Petitioners contend that the partial summary judgment Order made by the Respondent Superior Court as aforesaid denies them equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution. To illustrate the unjustifiable nature of the anomalous statutory scheme complained of by the Petitioners, if the DECEDENT had been walking Petitioners' dog and BAKER had killed that dog rather than DECEDENT, the Petitioners unquestionably would have had a right to proceed to Trial on the issue of punitive damages against BAKER; however, because BAKER killed Petitioners' **son** rather than their **dog**, Petitioners are being prevented from seeking punitive damages.

If BAKER's attack on the DECEDENT had not resulted in instantaneous death, DECEDENT's personal

representative(s) would have a right to recover punitive damages against BAKER pursuant to **California Probate Code,** Section 573 (**Grimshaw v. Ford Motor Co.** (1981) 119 C.A. 3d 757, at 829). However, since it has been conceded by all the parties in the subject action that the DECEDENT's death was **instantaneous,** DECEDENT's personal representative(s) had no such surviving right to recover any punitive damages. Nevertheless, by its subject partial summary judgment Order the Respondent Superior Court has made the additional conclusion that Petitioners also are not entitled to recover any punitive damages **as a matter of law** in their separate wrongful death action.

In connection with the aforesaid anomaly, as this Honorable Court commented in the **Grimshaw** case, **supra,** such "(a) statutory scheme which would punish a tortfeasor if he inflicts death-causing injury which does not result in simutaneous death but would not punish if death occurs instantaneously is difficult to explain on the basis of any conceivable, realistic, rational legislative purpose" (119 C.A. 3d at 834). Of course, Petitioners whole-heartedly agree with this Honorable Court, which is the basis for their Petition herein.

Petitioners have no plain, speedy, or adequate remedy at law, other than the relief sought in this Petition, since there is no right to an immediate appeal from Respondent's subject partial summary judgment Order as hereinafter discussed.

WHEREFORE, Petitioners, and each of them, pray as follows:

1. For a Writ of Mandate to issue under the seal of this Honorable Court commanding the Respondent Superior Court to vacate its subject Order granting a partial summary judgment which in essence prevents Petitioners from proceeding to Trial on the issue of punitive damages, or to show cause before this Honorable Court why it has not done so and why a Peremptory Writ should not issue;

2. On return of the aforesaid Writ and hearing on such Order to Show Cause, for a Peremptory Writ of Mandamus or some other Writ, or combination of Writs, to issue so as to provide the aforesaid relief requested by Petitioners;

3. That Petitioners receive their costs of suit incurred herein; and

4. For such other and further relief as this Honorable Court may deem just and proper.

DATED: February 16, 1982.

Respectfully submitted,
GEORGE L. CHELIUS
A Professional Law Corporation

By: GARY D. WELLS
Attorneys for Petitioners

VERIFICATION

I, Gary D. Wells, declare:

1. I have read the foregoing Petition For Writ Of Mandamus and know its contents.

2. I am one of the attorneys for Petitioners herein, parties to this action. Petitioners are absent from Orange County where such attorneys have their offices, and I make this Verification for and on behalf of Petitioners for that reason. I am informed and believe and thereon allege that the matters stated in it are true.

Executed on February 16, 1982, at Newport Beach, California.

I declare under penalty of perjury that the foregoing is true and correct.

GARY D. WELLS

II.
MEMORANDUM OF POINTS AND AUTHORITIES

A. PRELIMINARY STATEMENT.

By their Petition herein Petitioners seek the resolution of a very clearly-defined issue, to wit: whether heirs whose decedent died without a surviving claim for punitive damages are entitled to seek such damages in a wrongful death action.

In resolving the aforesaid issue Petitioners rely solely on their Complaint (Exhibit "A", attached), BAKER's Answer to that Complaint (Exhibit "B", attached), BAKER's Motion For Partial Summary Judgment (Exhibit "C", attached), Petitioner's Memorandum Of Points And Authorities in opposition to BAKER's said Motion (Exhibit "D", attached), and the Order of the Respondent Superior Court granting BAKER's said Motion for partial summary judgment, notice of which Order was waived by the parties, and BAKER conceding the issue of DECEDENT's **instantaneous** death, all as more particularly set forth in the Declaration of Gary D. Wells In Lieu Of Transcript (Exhibit "E", attached).

B. ISSUE PRESENTED.

Are heirs whose decedent died without a surviving claim for punitive damages entitled to seek damages in a wrongful death action?

C. MANDAMUS IS PROPER.

Although the most recent amendments to **California Code Of Civil Procedure,** Section 437c appear to allow entry of a partial summary judgment before the remaining issues are tried (See: 5 Pacific L.J. 291; **Worth v. Asiatic Transpacific** (1979) 93 C.A. 3d 849, at 856), such partial summary judgments may be **entered**, and are thereby immediately appealable, only " . . . where a separate judgment may properly be awarded in the action . . ." (**C.C.P.,** Section 437c). Accordingly, since it appears that the partial summary judgment Order in this case, which refused to allow Petitioners to proceed to Trial on the issue of punitive damages, is **not** such an order where any "separate judgment" may be properly awarded, it appears that such Order is not immediately appealable and Petitioners' Petition herein is properly made to this Honorable Court (**Field Research Corp. v. Superior Court** (1969) 71 C.2d 110, at 111).

D. DENIAL OF EQUAL PROTECTION.

In the interest of brevity, Petitioners' arguments in support of their contention that the subject partial summary judgment Order of the Respondent Superior Court amounts to an unconstitutional denial of equal protection of the law are succinctly stated and discussed at length in historical perspective by this Honorable Court in connection with its decision in the case of **Grimshaw v. Ford Motor Co., supra,** (119 C.A. 3d 757), and are incorporated herein by this reference.

In sum, to refuse to permit Petitioners to proceed to Trial on the the issue of punitive damages under the circumstances of the subject action is clearly unconstitutional, and is not justified " . . . on the basis of any conceivable, realistic, rational legislative purpose" (119 C.A. 3d at 834). In this case, there is no possibility of any "double recovery/windfall recovery" by the class of heirs to which the Petitioners belong. Indeed, by his own conduct in effecting DECEDENT's instantaneous demise, BAKER thereby effectively insured against any such double/windfall recovery.

Therefore, it appears that there is no correspondence between the ostensible legislative goals (i.e. to prevent "double/windfall" recoveries) and the classification of heirs to be excluded from punitive damages entitlement (i.e. heirs whose decedent died without surviving claim for such damages). Since there is no chance for any such double/windfall recovery in this case, there is no conceivable, realistic, rational legislative purpose which justifies the disparate treatment between Petitioners and any other class of tort victims (119 C.A.3d at 835). Moreover, since the express language of the wrongful death statute (C.C.P., Section 377) does not specifically proscribe an award of punitive damages, Petitioners respectfully submit that this Honorable Court should resolve any reasonable doubt in favor of constitutionality by interpreting that statute to allow an award of punitive damages under the circumstances of this case.

III.
CONCLUSION

In light of the foregoing, it appears that by granting the subject Motion for partial summary judgment the Respondent Superior Court thereby denied Petitioners' constitutional right to equal protection of the law; that under the circumstances of this case there is no possibility of any double/windfall recovery because at all times there was never any right to recover punitive damages by the personal representative(s) of the DECEDENT; and that there is no conceivable, realistic, rational legislative purpose which justifies any disparate treatment between Petitioners and any other class of tort victims. Accordingly, Petitioners respectfully request that this Honorable Court issue its extraordinary Writ compelling the Respondent Superior Court to vacate its subject Order granting BAKER a partial summary judgment which in effect prevents Petitioners from proceeding to Trial on the issue of punitive damages.

DATED: February 16, 1982

Respectfully submitted,
GEORGE L. CHELIUS
A Professional Law Corporation

By: Gary D. Wells
Attorneys for Petitioners

EXHIBIT "D"

4 CIV 27722

COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

LEE CHANCELLOR and JEAN CHANCELLOR,
Petitioners,

vs.

SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

and

MARK JAY BAKER,
Real Party In Interest.

4 CIV 27722
(Super. Ct. No. 30 51 00)

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDATE

LEGAL AID SOCIETY OF ORANGE COUNTY
BY: CRYSTAL C. SIMS
2700 North Main Street, 11th Floor
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(714) 835-8806
Attorneys for Real Party in Interest

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Attorneys for Real Party in Interest

COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

LEE CHANCELLOR and JEAN CHANCELLOR,
Petitioners,

vs.

SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

and

MARK JAY BAKER,
Real Party In Interest.

4 CIV 27722
(Super. Ct. No. 30 51 00)

Real Party In Interest respectfully submits the following Points and Authorities in opposition to petitioners' application for writ of mandate:

RECEIVED MAR. 2 1982

ARGUMENT

In the interest of brevity, the Court is referred to defendant's Motion for Partial Summary Judgment (Exhibit "C") for the factual and case development of the current status of punitive damages under Civic Code Section 3294.

I

PLAINTIFFS CANNOT STATE AN EQUAL PROTECTION VIOLATION SINCE AN AWARD OF PUNITIVE DAMAGES WOULD BE DUPLICATIVE AND EXCESSIVE

Plaintiffs seize upon this Court's discussion when confronted by malicious conduct of a corporate entity largely immune from criminal liability. **Grimshaw v. Ford Motor Co.**, 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981). However, several distinguishing facts are

Grimshaw inapposite to plaintiffs' present action.

The defendant is not a corporation using wrongful death judgments as a "cost" of doing business, but rather an individual who pled to the felony murder charges stemming from the death of plaintiff's son. Defendant is now incarcerated in Tracey, California until recommended for parole. Under recent legislation, plaintiffs may be entitled

to notice and opportunity to attend these parole hearings.

However, in addition to the institutional punishment clearly operating in this case, plaintiffs also seek, as a matter of constitutional law, the availability of a punitive damage judgment with which to levy, to the best of their ability, private punishment. This neither the legislature nor the courts are required to decree. Indeed, the use of the private system envisioned by plaintiffs may impede any meaningful return by a paroled inmate to productive, legitimate society. One can foresee the already scarce job opportunities for ex-convicts dwindle still further when confronted with garnishment orders, etc.

Thus, it is clear that, as to these plaintiffs, the limitation on punitive damages does not operate to deny any equal protection, but is instead reasonably related to preventing an excessive recovery of double punishment.

DATED: March 1, 1982

Respectfully submitted
CRYSTAL C. SIMS
Attorney for Mark Jay Baker

EXHIBIT "E"

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

LEE CHANCELLOR, et. al.

Petitioners,

vs.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,

Respondent.

MARK JAY BAKER,

Real Party In Interest.

4 Civil 27722
COUNTY NO. 305100

THE COURT:

The petition for writ of mandate is DENIED.

COURT OF APPEAL - FOURTH DISTRICT
FILED
MAR 11 1982
RICHARD J. SMITH, ACTING Clerk
Deputy Clerk

Kaufman, J.

Acting P.J.

C.C.

County Clerk, Orange County, 700 Civic Center Dr. West,
Santa Ana 92701

George L. Chelius, G.D. Wells, 610 Newport Center Dr.,
Ste. 1665, Newport Beach 92660

Crystal C. Sims, Legal Aid Soc. of Orange Co.,
2700 N. Main St., 11th Flr
Santa Ana 92701

EXHIBIT "F"

4th Civil No. 27722

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent.

MARK JAY BAKER, an Individual,

Real Party In Interest.

SUPREME COURT
FILED
MAR 22 1982
LAURENCE P. GILL, CLERK

PETITION FOR HEARING

From A Petition For Writ Of Mandamus
To The Court Of Appeal, Fourth Appellate District,
From An Order
By Hon. Thomas F. Crosby, Jr., Judge
Granting Partial Summary Judgment
In Orange County Superior Court Case No. 30 51 00

George L. Chelius, A Professional Law Corporation
By: Gary D. Wells
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Newport Beach, California 92660
(714) 759-0180
Attorneys For Petitioners

Manuscript Format By: Maureen Seville

EXHIBIT "F"

4th Civil No. 27722

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR, Individuals,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent.

MARK JAY BAKER, an Individual,

Real Party In Interest.

PETITION FOR HEARING

From A Petition For Writ Of Mandamus
To The Court Of Appeal, Fourth Appellate District,
From An Order
By Hon. Thomas F. Crosby, Jr., Judge
Granting Partial Summary Judgment
In Orange County Superior Court Case No. 30 51 00

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A. COURT OF APPEAL, DENIAL OF PETITION FOR WRIT OF MANDATE

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(1979) 93 C.A.3d 849 6

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TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

I.
PETITION FOR HEARING

Petitioners, Lee Chancellor and Jean Chancellor, hereby respectfully petition this Honorable Court for a hearing on the propriety of granting extraordinary relief in the nature of mandate directing the Respondent Superior Court Of The State Of California, For The County Of Orange, to vacate its certain partial summary judgment Order hereinafter described, and by this Petition allege:

A. IMPORTANT QUESTION OF LAW PRESENTED

A hearing before this Honorable Court is requested for the purpose of settling an important question of law, to wit: "Are heirs whose decedent died without a surviving claim for punitive damages entitled to seek such damages in a wrongful death action?"

As discussed below, Petitioners contend and respectfully urge this Honorable Court that only an affirmative response to the foregoing question will protect and preserve their constitutional right to equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. Nevertheless, the Trial Court granted Real Party's motion for partial summary judgment to the effect that Petitioners are thereby pre-

vented from proceeding to Trial on the issue of punitive damages.

B. STATEMENT OF THE CASE.

The Petitioners are the natural father and mother, respectively, and the sole surviving heirs at law of Carl Marcus ("Mark") Chancellor, deceased (hereinafter "DECEDENT"). To avoid the death penalty, the Real Party In Interest, Mark Jay Baker (hereinafter "BAKER"), plead guilty to and is currently serving a life sentence (with possibility of parole) for first degree murder in connection with DECEDENT's death. Petitioners are prosecuting their civil action for wrongful death against BAKER, which action is now pending in the Respondent Superior Court, entitled **Lee Chancellor and Jean Chancellor, Individuals, Plaintiffs, vs. Mark Jay Baker, an Individual, and DOES 1 through 10, inclusive, Defendants,** Orange County Superior Court Case No. 30 51 00.

BAKER has admitted to murdering DECEDENT during the late evening hours on February 10, 1978 in connection with and in furtherance of BAKER robbing the DECEDENT. On January 11, 1979, Petitioners commenced their wrongful death action against BAKER by filing their Complaint in the Orange County Superior Court; a photocopy of that Complaint is attached as Exhibit "A" incorporated by reference in Petitioners' Petition For Writ Of Mandamus filed with the Court of Appeal, Fourth Appellate District, on February 22, 1982 (hereinafter "Mandamus Petition").

In relevant part, Petitioners' Complaint alleges the outrageous nature of BAKER's conduct in murdering their son and requests recovery of punitive damages pursuant to **California Civil Code,** Section 3294 (**Ref: Complaint,** Page 3, Lines 13 through 18, inclusive, and 23; Exhibit "A" to Petitioners' Mandamus Petition).

On or about April 21, 1980, BAKER filed his Answer to Petitioners' Complaint, which Answer purports to deny all of the material allegations of that Complaint; a photocopy of BAKER's aforesaid Answer To Complaint is attached as Exhibit "B" incorporated by reference in Petitioners' Mandamus Petition.

On or about January 6, 1982, BAKER filed his Notice Of Motion For Partial Summary Judgment, which in essence requested that the Respondent Superior Court refuse to permit Petitioners to proceed to Trial on the issue of punitive damages; a photocopy of BAKER's Notice Of Motion, Etc. is attached as Exhibit "C" incorporated by reference in Petitioners' Mandamus Petition. As appears from those moving papers, BAKER argued that the Petitioners are not entitled to proceed to Trial on the issue of punitive damages **as a matter of law.**

On January 29, 1982, Petitioners timely filed their Memorandum Of Points And Authorities In Opposition To Defendant's Motion For Partial Summary Judgment, a photocopy of which Memorandum is attached as Exhibit "D" incorporated by reference in Petitioners' Mandamus Petition. As appears from that Memorandum, Petitioners

argued that under the circumstances of their particular case it would be a denial of constitutional equal protection of the law for the Respondent Superior Court to refuse to permit them to proceed to Trial on the punitive damages issue.

On February 10, 1982 the Respondent Superior Court in fact "reluctantly" did grant BAKER's aforesaid Motion for partial summary judgment. However, during the course of those Motion proceedings, the Respondent Superior Court announced that it would grant BAKER's Motion only on the condition that BAKER concede the issue of DECEDENT's **instantaneous** death, and BAKER, through counsel, did indeed concede that issue at that time. Accordingly, as a result of the Respondent Superior Court's ruling and order as aforesaid, it is conceded that Petitioners constitute "heirs whose decedent died **without** any surviving claim for punitive damages". The foregoing is more particularly set forth in the Declaration Of Gary D. Wells In Lieu Of Transcript a photocopy of which Declaration is attached as Exhibit "E" incorporated by reference in Petitioners' Mandamus Petition.

As stated above, on February 22, 1982, Petitioners filed their Mandamus Petition with the Court Of Appeal, Fourth Appellate District. BAKER's Memorandum Of Points And Authorities In Opposition, Etc., dated March 1, 1982, was served by mail on Petitioners on that same date. On March 11, 1982, the Court Of Appeal entered its denial of Petitioners' Mandamus Petition, without opinion;

a photocopy of that Court Of Appeal denial Order is attached hereto as Exhibit "A" and incorporated herein by this reference.

II.
MEMORANDUM OF POINTS AND AUTHORITIES

A. PRELIMINARY STATEMENT.

By their Petition herein Petitioners seek the resolution of a very clearly-defined issue, to wit: whether heirs whose decedent died **without** a surviving claim for punitive damages are entitled to seek such damages in a wrongful death action.

In resolving that issue, Petitioners rely on their Complaint, BAKER's Answer to that Complaing, BAKER's Motion For Partial Summary Judgment, Petitioner's Memorandum Of Points And Authorities in opposition to that Motion, the Order of the Respondent Superior Court granting that Motion for partial summary judgment, and on BAKER conceding the issue of DECEDENT's **instantaneous** death, all as more particularly set forth in the Declaration Of Gary D. Wells In Lieu Of Transcript (Exhibits "A", "B", "C", "D" and "E", respectively, to Petitioners' Mandamus Petition), on Petitioners' Mandamus Petition, this Petition For Hearing and any amended and supplemental papers may be filed hereafter, and on any further and additional papers which may be submitted at the time of any hearing on this Petition.

B. RESPONDENT'S ERROR/ABUSE OF DISCRETION.

1. Denial Of Equal Protection.

The Respondent Superior Court erred in refusing to permit Petitioners to proceed to Trial on the issue of punitive damages.

Petitioners contend that the partial summary judgment Order made by the Respondent Superior Court denies them equal protection of the law which is guaranteed by the Fourteenth Amendment to the United States Constitution. To illustrate the unjustifiable nature of the anomalous statutory scheme complained of by the Petitioners, if the DECEDENT had been walking Petitioner's dog and BAKER had killed that dog rather than DECEDENT, the Petitioners unquestionably would have had a right to proceed against BAKER on the issue of punitive damages; however, because BAKER killed Petitioners' **son** rather than their **dog** Petitioners are being prevented from seeking punitive damages.

If BAKER's attack on the DECEDENT had **not** resulted in instantaneous death, DECEDENT's personal representative(s) would have had a right to recover punitive damages against BAKER pursuant to **California Probate Code,** Section 573 (**Grimshaw v. Ford Motor Co.** (1981) 119 C.A.3d 757, at 829). However, since it has been conceded by all the parties in the subject action that the DECEDENT's death was **instantaneous**, DECEDENT's personal representative(s) had no such surviving

right to recover any punitive damages (**Grimshaw v. Ford Motor Co., supra,** 119 C.A.3d at 833). Nevertheless, by its subject partial summary judgment Order the Respondent Superior Court has made the additional conclusion that Petitioners also are not entitled to recover any punitive damages **as a matter of law** in their separate wrongful death action.

In connection with the aforesaid anomaly, as the Court Of Appeal, Fourth Appellate District, commented in the **Grimshaw** case, **supra,** such "(a) statutory scheme which would punish a tortfeasor if he inflicts death-causing injury which does not result in simultaneous death but would not punish if death occurs instantaneously is difficult to explain on the basis of any conceivable, realistic, rational legislative purpose (Citations omitted)" (119 C.A.3d at 834).

In the absence of any such "conceivable, realistic, rational legislative purpose", Petitioners are being arbitrarily singled out for disparate treatment from all other classes of tort victims. Moreover, the "double recovery/windfall recovery" argument usually given as the rationale for denying the right to recover punitive damages in wrongful death cases (**Cf.:** 119 C.A.3d at 835) clearly is not applicable to the class of heirs to which the Petitioners belong. Indeed, by his own conduct in causing DECEDENT's **instantaneous** demise, BAKER thereby effectively insured against any such double/windfall recovery.

2. Mandamus Is Proper.

Although the most recent amendments to **California Code Of Civil Procedure,** Section 437c appear to allow entry of a partial summary judgment before the remaining issues are tried (See: 5 Pacific L.J. 291; **Worth v. Asiatic Transpacific** (1979) 93 C.A. 3d 849, at 856), such partial summary judgments may be **entered**, and are thereby immediately appealable, only " . . . where a separate judgment may properly be awarded in the action . . ." (**C.C.P.,** Section 437c). Accordingly, since it appears that the partial summary judgment Order in this case, which refused to allow Petitioners to proceed to Trial on the issue of punitive damages, is **not** such an order where any "separate judgment" may be properly awarded, it appears that such Order is not immediately appealable and Petitioners' Mandamus Petition was properly made to the Court Of Appeal (**Field Research Corp. v. Superior Court** (1969) 71 C.2d 110, at 111).

Moreover, Petitioners' Petition For Hearing to this Honorable Court is properly and timely made from the Order of the Court Of Appeal denying that Mandamus Petition (**California Rules Of Court,** Rules 24 and 28.

C. REAL PARTY'S SHAM OPPOSITION.

Most generously stated, BAKER's argument in opposition to Petitioners' Mandamus Petition was as follows: "Whenever a defendant engages in wrongdoing which coincidentally violates the Penal Code he thereby becomes immune to civil prosecution for punitive damages".

Otherwise, according to BAKER, to allow any such civil punitive damages recovery is some manner would be to allow a "double recovery" to the most direct victims of that wrongful conduct. Under such a system of injustice, every type of negligent as well as intentional wrongdoer for whom punishment is provided under the Penal Code would be immune from any civil punitive damages recovery in deference to the potential for incarceration.

Such a system would provide that regardless of how many persons are injured or killed as a result of negligent homicide or some reckless or drunk driver's careless act, or as a result of some other negligent conduct subject to criminal prosecution, and regardless of how many persons are brutalized and killed by muggers, rapists, murderers and other intentional wrongdoers, every criminal could rest assured that his "punishment" would be limited to whatever he could negotiate through plea or sentence bargaining. Then, typically, after serving only a small fraction of that supposed punishment, he would be free to brutalize and kill again, leaving a new group of uncompensated victims in his wake. Such is the revolving door of recitivism which plagues our criminal justice system and illustrates the weakness of that system to serve as punishment or deterrent.

Finally, in an apparently desparate attempt to say something - **anything** - to gain some modicum of sympathy for his wholly unsympathetic position, BAKER further embellished his ludicrous "Opposition" argument by

contending that in some inexplicable manner as a convicted murderer he might experience greater difficulty in securing employment if Petitioners obtain a civil judgment against him! (**Ref.: Opposition,** Pp. 2-3). That additional contention is silly at best, and indeed constitutes an outright misstatement of fact (**Cf.: California Code of Civil Procedure,** Sections 681, et seq. - 30 categories of exemptions from execution; **California Labor Code,** Section 2929 - no discharge for garnishment of wages; etc.). Clearly, BAKER is attempting to hide behind the fact that his outrageous conduct in murdering one of his fellow human beings indeed constitutes a **criminal** as well as a **civil** wrong, and ignores the separate and distinct elements of punishment involved between criminal incarceration and civil damages.

BAKER's contentions to the contrary notwithstanding, resolution of the equal protection issue presented in this case does not require this Honorable Court to engage in any such esoteric inquiry into the adequacies or inadequacies of our system of criminal justice to serve society's interests in retribution, special or general deterrence, or rehabilitation. The question in this case, avoided entirely by BAKER's purported "Opposition", is whether the applicable law should be interpreted so as to allow Petitioner to recover punitive damages in their wrongful death action against BAKER at whose hands the Decedent died **without** any claim for punitive damages, thereby interpreting that law so as to uphold its constitutionality on the issue of equal protection.

Completely separate and distinct interests and classes of victims suffered as a result of BAKER murdering Petitioners' 20 year old son. Most directly, of course, the Decedent's interest in the continuation of his own life, liberty and pursuit of happiness was brutally and instantaneously terminated. Petitioners' interest in maintaining their familial relationship with Decedent and enjoying his companionship, affection, society, comfort, services, support and other very special benefits naturally flowing from that relationship was likewise summarily dispatched. And, Society's interest in maintaining the public peace was also violated.

BAKER's clearly self-serving contention is to the effect that by "paying" his debt to Society alone he will have **paid in full.** By anology, BAKER also could be expected to argue that by tipping the Maitre d' he is thereby relieved of his obligation to pay for his meal! Even assuming **arguendo** that he ultimately does fully pay his debt to Society, BAKER thereby will **not** have paid his debt to Decedent's estate or to Decedent's heirs who are properly entitled to recover punitive damages against BAKER for his arbitrary termination of their respective interests which are separate and distinct from, **and in addition to,** Society's interest in maintaining law and order (**Ref: California Probate Code,** Section 573; **California Civil Code,** Section 3294; **California Code of Civil Procedure,** Section 377).

III.
CONCLUSION

In light of the foregoing, it appears that there is no correspondence between the ostensible legislative goals (i.e. to prevent "double/windfall" recoveries) and the classification of heirs to be excluded from punitive damages entitlement (i.e., heirs whose decedent died **without** a surviving claim for such damages). Since there is no chance for any such double/windfall recovery in this case, there is no conceivable, realistic, rational legislative purpose which justifies the disparate treatment between Petitioners and any other class of tort victims. Moreover, since the express language of the wrongful death statute (**C.C.P.**, Section 377) does not specifically proscribe an award of punitive damages, Petitioners respectfully submit that this Honorable Court should resolve any reasonable doubt in favor of constitutionality by interpreting that statute to allow an award of punitive damages under the circumstances of this case.

Accordingly, Petitioners respectfully request and urge this Honorable Court to grant the relief prayed for in their Mandamus Petition on file herein, and for such other and further relief as may be proper.

DATED: March 18, 1982

Respectfully submitted,

GEORGE L. CHELIUS
A Professional Law Corporation

By: GARY D. WELLS
Attorneys for Petitioners

EXHIBIT "G"

4 CIV 27722

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR,
Petitioners,

vs.

SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

and

MARK JAY BAKER,
Real Party In Interest.

4 CIV 27722
(Super. Ct. No. 30 51 00)

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR HEARING

LEGAL AID SOCIETY OF ORANGE COUNTY
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714-835-8806

Attorneys for Real Party in Interest

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LEE CHANCELLOR and JEAN CHANCELLOR,
Petitioners,

vs.

SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

and

MARK JAY BAKER,
Real Party in Interest.

4 CIV 27722
(Super. Ct. No. 30 51 00)

Real Party in Interest respectfully submits the following Points and Authorities in opposition to petitioners' Petition for hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

Preliminary Statement

Plaintiffs in their Complaint allege that they are the natural parents of KARL MARCUS CHANCELLOR, who died on February 10, 1978. In their Complaint, plaintiffs seek punitive and exemplary damages pursuant to Civil Code §3294 (Paragraph 10) and pray for punitive damages. Defendant is presently incarcerated in the State Penitentiary at Tracey, California, after pleading guilty to the felony murder charges arising out of the death of plaintiffs' 20 year old son. Trial is currently set for June 28, 1982.

I.

CIVIL CODE SECTION 3294 DOES NOT PERMIT THE RECOVERY OF PUNITIVE DAMAGES IN THE INSTANT WRONGFUL DEATH ACTION.

Although punitive damages may be recovered in survival actions and tort actions generally pursuant to Civil Code §3294, that section does not apply to wrongful death actions. **In re Paris Air Crash,** 622 F.2d 1315 (9th Cir. 1980; **Grimshaw v. Ford Motor Co.,** 119 Cal. APp. 3d 833, 174 Cal. Rptr. 348 (1981); **Tarasoff v. Regents of the Univ. of Calif.,** 17 Cal. 3d 425, 131 Cal. Rptr. 14 (1976); **Pease v. Beech Aircraft Corp.,** 38 Cal. App. 3d

450; 113 Cal. Rptr. 416 (1974). Instead, Code of Civil Procedure Section 377 governs wrongful death actions where punitive damages are not recoverable. **Georgie Boy Mfg., Inc. v. Superior Court, etc.,** 115 Cal. App. 3d 317 (1981), **Cortez v. Macias,** 110 Cal. App. 3d 640 (1980).

Code of Civil Procedure Section 377 creates a wholly statutory cause of action in the heirs of the decedent. 4 Witkin, Torts § 787, p. 3085. This cause of action must be based on the plaintiffs' own pecuniary loss and is distinct from any the deceased might have maintained had he survived. See **Justus v. Atchison,** 19 Cal. 3d 564, 572, 139 Cal. Rptr. 97 (1977); **Carr. v. Duncan,** 90 Cal. App. 2d 282, 284, 202 P. 2d 855 (1949); **Adams v. U.C.C. Project Development Corp.,** 48 Cal. App. 3d 836, 839, 122 Cal. Rptr. 58 (1975); **Estate of D'India,** 63 Cal. App. 3d 942, 947, 134 Cal. Rptr. 165 (1976).

Under the above authorities, real party respectfully submits that punitive damages cannot be recovered in the instant action under Civil Code Section 3294.

II.

DENIAL OF AN AWARD OF PUNITIVE DAMAGES DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES

If there is a rational relationship between the statute and a legislative object, then the statute limiting tort liability is valid. **In re Paris Air Crash, supra.** In dealing

with limitations on tort liability, the United States Supreme Court has upheld statutes far more restrictive than Code of Civil Procedure § 377. In **Mobile Oil Corp. v. Higginbotham,** 436 U.S. 618 (1978), the Court upheld a statute where a certain class of plaintiffs was deprived all together of one type of compensatory damages. Again in **Duke Power Co. v. Carolina Environmental Study Group,** 438 U.S. 59 (1978), the Court sustained a ceiling on aggregate liability for nuclear accidents.

Similar to the above cases, the purpose of Code of Civil Procedure Section 377 is to provide compensation for pecuniary losses of the heirs of decedents while simultaneously preventing excessive recoveries in wrongful death action. Disallowance of punitive damages clearly serves these important goals. **In re Paris Air Crash, supra; Georgie Boy Mfg. Co., Inc. v. Superior Court, supra; Cortez v. Macias, supra.**

Plaintiffs seize upon an appellate court's discussion when confronted by malicious conduct of a corporate entity largely immune from criminal liability. **Grimshaw v. Ford Motor Co.,** 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981). However, several distinguishing facts are present in this proceeding to reveal the "anomoly" of **Grimshaw** inapposite to plaintiffs' present action.

The real party is not a corporation using wrongful death judgments as a "cost" of doing business, but rather an individual who pled to the felony murder charges stemming from the death of plaintiff's son. Real party is now

incarcerated in Tracey, California until recommended for parole. Under recent proposed legislation, plaintiffs may be entitled to notice and opportunity to attend these parole hearings.

However, in addition to the institutional punishment clearly operating in this case, plaintiffs also seek, as a matter of constitutional law, the availability of a punitive damage judgment with which to levy, to the best of their ability, private punishment. This neither the legislature nor the courts are required to decree. Indeed, the use of the private system envisioned by plaintiffs may impede any meaningful return by a paroled inmate to productive, legitimate society. One can forsee the already scarce job opportunities for ex-convicts dwindle still further when confronted with garnishment orders, etc.

Thus, it is clear that, as to these plaintiffs, the limitation on punitive damages does not operate to deny any equal protection, but is instead reasonably related to preventing an excessive recovery of double punishment.

CONCLUSION

The petition for hearing should be denied.

DATED: March 29, 1982

Respectfully submitted,

CRYSTAL C. SIMS
Attorney for MARK JAY BAKER

EXHIBIT "H"

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order

HEARING DENIED

In re: 4 civ. *No.* 27722

Lee Chancellor et al.

vs.

Superior Court, Orange County
(Mark Jay Baker)

Respectfully,

RECEIVED APR 2 6 1982 *Clerk*

EXHIBIT "I"

FILED
FEB 16 1982
LEE A. BRANCH, County Clerk
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

LEE CHANCELLOR, et ux.,	)	
	)	
Plaintiffs,	)	CASE NO. 30 51 00
	)	
vs.	)	DECLARATION OF
	)	GARY D. WELLS IN
MARK JAY BAKER, etc., et al.,	)	LIEU OF
	)	TRANSCRIPT
Defendants.	)	
	)	

DECLARATION OF GARY D. WELLS

I, Gary D. Wells, declare:

1. I am an attorney at law licensed to practice and practicing in the State of California and am associated with the law firm of George L. Chelius, A Professional Corporation, the attorneys of record for the Plaintiffs in the above-captioned action; the facts hereinafter stated are known to me of my own personal knowledge and if called as a witness I am competent to testify thereto, except as to such matters as may be hereinafter stated on

my information and belief and as to such matters I believe them to be true.

2. I make this Declaration In Lieu Of Transcript for the following reasons:

(a) On February 10, 1982, in Department 22 of the above-entitled Superior Court, the Honorable Thomas F. Crosby, Jr., Judge, presiding, the Court granted Defendant's Motion For Partial Summary Judgment, which ruling in effect refused to permit Plaintiffs to proceed to Trial on the issue of punitive damages;

(b) The Court specifically stated that it was granting Defendant's said Motion "reluctantly" for the reason it appeared to the Court that in so doing the Plaintiffs thereby were being denied Constitutional equal protection of the laws, but that such a determination was a matter more appropriately deferred for review by the Appellate Court;

(c) The Court granted Defendant's said Motion only on the condition that Defendant concede the issue of **instantaneous** death; and

(d) Defendant, through counsel, did indeed conceed the aforesaid issue and the Court ordered that the fact of the Decedent's **instantaneous** death was deemed admitted for all purposes in this action, thereby establishing that the Plaintiffs in this case constitute "heirs whose decedent died **without** any surviving claim for punitive damages".

3. On February 10, 1982 I contacted the Court Reporter who reported the in-Court proceedings in connection with Defendant's Motion as aforesaid, and requested that she prepare a written transcript of those proceedings as soon as possible; during the course of that telephone communication, the Court Reporter advised me that she would be unable to prepare any such transcript until some time on or after February 23, 1982.

4. Although I have requested the Court Reporter to prepare the aforesaid transcript at her earliest opportunity, I am making this Declaration at this time to memorialize the substance of the Court's ruling and order as aforesaid in the interest of obtaining Appellate review of the subject **punitive damages** issue at the earliest possible opportunity in an attempt to avoid any delay in preparing or presenting Plaintiffs' action at the time now scheduled for the Trial of this matter to commence on June 28, 1982

Executed on February 11, 1982, at Newport Beach, California.

I declare under penalty of perjury that the foregoing is true and correct.

GARY D. WELLS

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 Agate Street, Riverside, California 92509.

On July _____ , I served the within PETITION FOR WRIT OF CERTIORARI on the interested parties in said action, by placing a true copy in each of two (2) sealed envelopes, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, address as follows:

Clerk of the Superior Court
County of Orange
700 Civic Center Drive West
Santa Ana, California 92707

Legal Aid Society of Orange County
Crystal C. Sims
2700 North Main Street, 11th Floor
Santa Ana, California 92701

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on July _____ , at Santa Ana, California.

_____
JACK GALLAGHER